IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 655 of 1981.
Date of Decision: December 15, 2006.

Jai Dev Singh

....Appellant

through
Mr. S.K.S.Bedi, Advocate

Versus

M.L.Kapoor

...**Respondent**
through
Mr. Rajesh Garg, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This order shall dispose of Regular Second Appeal No.655 of 1981 as well as Civil Revision No.768 of 1995 as common questions of law and facts are involved in both the cases. For the sake of brevity, the facts are being referred from RSA No.655 of 1981.

[2]. The respondent-landlord filed a suit for mandatory injunction to direct the appellant-tenant to pull down the unauthorised structure raised by him after 30th September, 1978 and also to pass a decree for permanent injunction restraining the appellant from making any construction or alteration in House No.112/72-112/75, Ahata A.C.Kapoor & Sons, Ambala Cantt.

[3]. The learned trial Court vide judgment and decree dated 6th March, 1980 decreed the suit thereby directing the appellant to demolish the unauthorised construction consisting of four rooms made by him at the site in dispute and also restraining him from making further construction in the demised premises. The first Appellate Court, vide its judgment and decree dated 12th December, 1980 affirmed the judgment and decree passed by the learned trial Court.

[4]. It has come on record that the demised premises was rented out to the appellant in the year 1948. It comprised of five rooms, out of which four rooms completely fell down due to heavy rains in the month of September, 1978. The fifth room was also in a very bad condition and was unfit and unsafe for human habitation. Initially, the respondent-landlord filed a suit for permanent injunction on 19th September, 1978 along with an application to grant *ad-interim* injunction in which ex-parte ad-interim injunction was granted by the Civil Court on 19th September, 1978 and Shri Uma Kant Shangla, Advocate, was appointed as a Local Commissioner to visit the spot and report about the existing condition of the tenanted premises. The afore-stated ad-interim injunction, however, was vacated by the Civil Court on 30th September, 1978. The respondent-landlord preferred an appeal against the afore-stated inter-locutory order in which the learned first Appellate Court granted ad-interim injunction vide order dated 3rd October, 1978 which was finally confirmed on 27th November, 1978 whereby the order dated 30th September, 1978 passed by the learned trial Court was set aside. However, during the interregnum, when there was no injunction order, the appellant reconstructed the premises by putting tiled roof. This led the respondent-landlord to amend his suit and seek a decree

for mandatory injunction for removal of the unauthorised construction carried out by the appellant.

[5]. The facts regarding falling of four rooms due to heavy floods in Ambala Cantt and/or reconstruction thereof by the appellant, are not in dispute. It could also not be seriously disputed that when the first Local Commissioner visited the spot on 19th September, 1978, no new construction was found to have been raised at the spot, though the Local Commissioner reported that four out of five rooms of the demised premises had fallen down. However, the second Local Commissioner, Shri J.K.Puri, Advocate, visited the spot on 6th October, 1978 and reported the new construction raised recently at the spot. As per his report, the roofs were still incomplete and height of the walls was only about eight feet. Whereas, the first Local Commissioner appeared as a witness of the respondent-plaintiff and produced his report (Ex.P6), Shri J.K.Puri, appeared as appellant's witness and exhibited his report on record.

[6]. In the light of the above noted admitted facts, the only issue raised and which needs to be answered is as to whether or not the appellant-tenant had the authority to raise construction in the demised premises?

[7]. Both the Courts have concurrently held that the appellant had no right or authority to reconstruct the premises without the written consent of the landlord. On the basis of the afore-stated findings, the respondent filed an ejectment petition for the appellant's eviction from the demised premises under the Haryana Urban (Control of Rent and Eviction) Act, 1973 on the grounds that (i) the premises had become unfit and unsafe for human habitation; and (ii) the appellant was guilty of carrying out material alterations which have impaired materially the value and utility of the

building. The said ejectment petition has also been accepted by the Rent Controller, as a result of which eviction order has been passed against the appellant. As the appellant's appeal was also turned down by the Appellate Authority, the orders passed by the Rent Controller and Appellate Authority are being assailed by him in the accompanying revision petition (No.768 of 1995).

[8]. In order to answer the question, posed herein above, it may also be noticed here that admittedly the relationship of landlord and tenant between the parties is governed by the provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973. Section 12 of the Act provides that if a landlord fails to make the necessary repairs to a building **other than structural alterations,** the tenant is entitled to make an application before the Rent Controller, who is competent to direct that necessary repairs be carried out in the residential premises. If the landlord fails to comply with these directions, the Rent Controller can permit the tenant to carry out such repairs at the cost of the landlord.

[9]. Section 13 enumerates those limited grounds which entitle a landlord to seek eviction of his tenant. Under Section 13(2)(iii), the ejectment of a tenant can be sought if the demised premises have become unfit and unsafe for human habitation or the tenant has committed such acts as are likely to impair materially the value and utility of the building. If Sections 12 and 13 of the Act are read together, it is apparent from the Legislative scheme that so long as the tenanted premises requires repair on account of usual wear and tear, the landlord is obligated to carry out such repairs. However, if it is a case of structural alterations, which, in the general parlance shall amount to reconstruction, renovation and/or partial

reconstruction of the premises, the landlord is not obligated to carry out such material repairs. On the other hand, Section 13(2)(iii) entitles the landlord to seek eviction of his tenant if the building has become unfit and unsafe for human habitation which obviously means that either it requires to be re-built or needs large scale repairs for the reason that the building has outlived its life and utility. From the scheme of Rent Act, it is, thus, very much clear that a tenant is not entitled to carry out material alterations in the rented premises. Rather, if, with the passage of time, condition of the building is deteriorated to the extent that it becomes unfit for human habitation, such a tenant entails the consequence of vacating the same. The other necessary corollary would be that even in the case of minor repairs, the tenant is not entitled to carry out the same at his own and he is required to move an application before the Rent controller who shall issue directions to the landlord to carry out the same. It is only if the landlord fails to comply with the directions issued by the Rent Controller in this regard that the tenant can seek further permission from the Rent Controller to carry out such repairs at his own and at the cost of the landlord. Admittedly, no such procedure was followed by the appellant in the present case. Thus, there is no provision under the Rent Act which can protect the appellant's action of carrying out reconstruction of the premises at his own.

[10]. In a case where the relationship of landlord and tenant is not governed by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973, one looks towards Section 108 of the Transfer of Property Act, 1882 which defines the rights and liabilities of the lessor and lessee. Section 108(f) casts an obligation upon the lessor to carry out necessary repairs in the leased out premises and if he fails to do so, the

lessee is entitled to make such repairs himself and deduct the expenses of such repairs from the lessor. Similarly, Section 108(e) contemplates a situation where on account of acts of God, like, fire, flood etc., the leased out property or any material part thereof, is wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, yet the only option given to the lessee is to get the lease declared as void to the extent of such portion. Similarly, Section 108(m) obligates that the lessee shall, on the termination of the lease, restore the property in good condition, as it was at the time when he was put in possession. Section 108(p) further obligates that the lessee, without the lessor's consent, can not erect on the property any permanent structure except for agricultural purposes. Thus, under the aforesaid provision also, there is an express prohibition against the tenant from erecting a permanent structure, without the lessor's consent.

[11]. The question posed in this appeal, thus, has to be answered against the appellant.

[12]. However, in all fairness to learned counsel for the appellant, he has heavily relied upon a judgment of the Hon'ble Supreme Court in the case of **Shadi Singh v Rekha, HAP 1992 SC, 411**. That was a case under the East Punjab Urban Rent Restriction Act, 1949 wherein the landlord sought ejectment of the tenant on the ground that the demised premises was required to be re-constructed as it had become unfit and unsafe for human habitation. The Rent Controller passed an eviction order against the tenant which was reversed by the Appellate Authority on the ground that the appellant had already carried out repairs in the shop and as such the ground of ejectment no longer subsists. The judgment of the Appellate Authority was, however, set aside by this Court in a revision petition filed by the

landlord. Aggrieved, the tenant preferred a Special Leave Petition before the Hon'ble Supreme Court. Their Lordships, having regard to the provisions of the 1949 Act, made distinction between effecting repairs and in its guise to make structural alteration or to restructure the building. It was held that "the tenant can not effect structural alteration or reconstruct the building. It is the right of the landlord alone to exclusively have it done, unless of course, the landlord having had the tenant evicted from the building for that purposes and demolished the building and failed to reconstruct and redeliver possession thereof to the tenant". The Hon'ble Supreme Court, keeping in view the express provision contained in the 1949 Act which obligates a landlord to re-deliver possession of the demised premises to the tenant after re-constructing the same if he had got it vacated on the ground of having become unfit for human habitation, further held that since even after re-construction of the building, the same was required to be handed-over back to the tenant, it was hardly of any consequence that the re-construction was made by the landlord or the tenant. The Hon'ble Supreme Court thereafter concluded as follows:-

> "It is settled law that subsequent events can be taken note of and the relief would be moulded suitably, vide Hasmat Rai & Anr. V Raghunath Prasad and M/s Variety Emporium v V.R.M.Mohdf. Ibrahim Naina (1985) 2 SCR, 102 at 110. Therefore, the appellate authority (District Court) is well justified in its conclusion that the cause of action for eviction of the appellant no longer subsisted after the tenant effected repairs and replaced that part of the fallen roof and the

order of eviction, thereafter became unnecessary and wrong".

[13]. As the observations made by their Lordships in **Shadi Singh's case (supra)**, were in apparent conflict with another two Judges Bench judgment of the Hon'ble Supreme Court in the case of **Wazir Chand v Swarankar Sabhar (1990-2) 98 PLR, 173**, a Division Bench of this Court in the case of **Ram Sarup v Din Dayal (1996-2) PLR, 770**, upon consideration of both the judgments, held as follows:-

"On the basis of above, we hold that the decision in Shadi Singh's case does not lay down a proposition of law that after obtaining possession of the building or land under Section 13(3)(a)(iii) of the Punjab Act or Section 13(3)(c) of the Haryana Act, the landlord should construct a new building after demolishing the old structure and restore its possession to the tenant. We hold that the judgment of the Supreme Court in Wazir Chand v Swarankar Sabha (supra) lays down the correct law and it should be followed for interpreting Section 13(4) of the Punjab Act and Section 13(6) of the Haryana Act. We also hold that the tenant is not entitled to restoration of possession under Section 13(4) of the Punjab Act or Section 13(6) of the Haryana Act where the landlord obtains possession of a tenanted building or land under Section 13(3)(a)(iii) of the Punjab Act or Section 13(3)(c) of the Haryana Act and constructs a new building after demolition of the old structure".

[14]. The very fact that a tenant is not entitled to restoration of possession if he is evicted under Section 13(3)(c) of the Haryana Act, which is applicable in the present case, the *ratio descendi* of the Apex Court judgment in **Shadi Singh's case (supra)** is not at all attracted.

[15]. Consequently, for the reasons afore-stated, no fault can be found with the view taken by the Courts below. The Regular Second Appeal is accordingly dismissed.

[16]. As far as the order of eviction is concerned, suffice it to say that there is a concurrent finding of fact by the courts below that the premises was in fact reconstructed by the appellant. This fact has not been disputed by the appellant also. It has also come on record that earlier the height of the roof of the demised premises was 12-13 feet, which, by virtue of new construction, has been reduced to 8 feet. By now, it is well settled that the material impairment of the value and utility of the building must be judged and determined from the point of view of the landlord and no one else. Reference may be made to (i)**Vipin Kumar v Roshan Lal Anand & Ors. (1993-2) PLR, 349 (SC), (ii) Gurbachan Singh & Anr. V Shivalak Rubber Industries & Ors. (1996) 2 SCC, 626 and (iii) Amar Nath Sugan Chand & Ors. V Lal Chand Bansal, 1994 (Supplementary) (2) SCC, 369.**

[17]. In addition, it stands established on record that but for the unauthorised re-construction made by the appellant, the demised premises had become unfit and unsafe for human habitation. The fact that the original premises is consisting of five rooms out of which the four had fallen down and the fifth was also at the verge of collapse, amply proves that the premises had become totally dangerous and could not be used for human

habitation. Merely because the appellant, without any authority in law, partly reconstructed the premises by putting the tiled roof, *per-se*, could not defeat the landlord's right to seek the appellant's eviction under Section 13 (3)(c) of the Act.

[18]. Consequently, I do not find any merit in the revision petition also which too is dismissed.

[19]. The parties are, however, left to bear their own costs.

December 15, 2006. **(SURYA KANT)**
dinesh **JUDGE**